COLORADO'S RACIAL WEALTH GAP:
MASS INCARCERATION & SCHOOL-TO-PRISON PIPELINE

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Over the past 30 years, the United States has incarcerated an unprecedented number of people, far surpassing our own population growth and the per-capita rate of all other developed nations. In 2010, some 7.25 million Americans were either in prison, in jail, on probation, or on parole — an increase of more than 5 million since 1980. [i] These trends have also produced a complementary phenomenon: the school-to-prison pipeline.

Nationwide, black Americans account for roughly 13 percent of the population, but make up more than 37 percent of those incarcerated. These disproportionate rates have led to discussions about criminal justice reform; unfortunately, these conversations often overlook the financial and economic impacts, as well as policies and history, that have created this trend. Mass incarceration is both a product and cause of the racial wealth gap. This brief explores the impact of mass incarceration and the school-to-prison pipeline on the racial wealth gap in Colorado, through the context of the policies and history that created and continue these trends.

Mass Incarceration's Impacts in Colorado

Incarceration has a pronounced effect on employment and providing for oneself or a family. More than 60 percent of formerly incarcerated individuals nationwide are unemployed one year after being released. Those who do find jobs take home 40 percent less pay annually. Incarceration is highly disruptive for career prospects and can have a long-standing "scarring effect" on formerly incarcerated individuals and their employment prospects, which can seriously affect the purchasing and earning power of families. Several studies show by removing the primary earners from a household, mass incarceration increases the depth of poverty of among poor families. These effects can have intergenerational consequences, leading to higher rates of child poverty.

In terms of government assistance, incarceration often limits an individual's access to benefits. For example, Coloradans with a drug conviction can only receive Temporary Assistance for Needy Families (TANF) benefits if they complete a drug rehabilitation program deemed acceptable by their county. Free drug rehab programs are extremely rare; that is, if a given county health department will even accept it. For those with a higher likelihood of unemployment and being impoverished, restrictive access to assistance punishes poverty, makes self-sufficiency less likely, and often leads to recidivism. In Colorado, the recidivism rate is 50 percent — a rate that's 10 points higher than the national average.

These impacts have a ripple effect in communities, which some researchers call "durable inequality," meaning residents cannot escape what might otherwise be short-term poverty. Researchers James Lynch and William Sabol suggest this is because mass incarceration disrupts a community's informal methods of social control and social support by breaking up families, removing purchasing power from the neighborhood, increasing reliance on government support programs, and generally erecting even higher barriers to legitimate development and financial well-being.

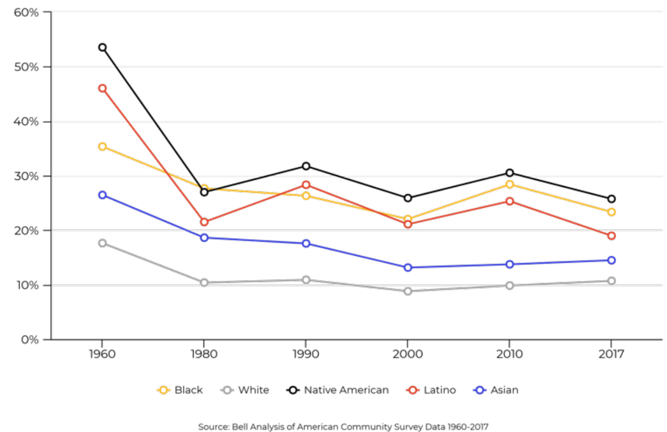
Racial Disparities in Criminal Justice

As of 2010, 3.6 percent of all black Coloradans are incarcerated compared to 3 percent of all Native Americans in Colorado, 1.3 percent of all Latino Coloradans, and 0.05 percent of all white Coloradans. This disparity isn't clearly caused by poverty alone. Using data from Opportunity Insights the Bell analyzed Coloradans born between 1978 and 1983 with parents in the lowest 25 percent of all incomes. Six percent of black individuals are incarcerated compared to 1.5 percent of white individuals. The racial disparity in these measures suggests even when controlling for poverty in Colorado, people of color are more likely to go to prison.

Among juveniles in Colorado, black youth are more than three times more likely to be arrested than white youth. Statewide, Latino youth are more than four times more likely to be committed to the Department of Youth Corrections (DYC) — juvenile incarceration — while black youth are more than two times more likely to be committed. All youth of color are more likely to be arrested than white youth and are more than three times more likely to be committed to DYC. This is paralleled by Colorado's rates of in-school arrest.

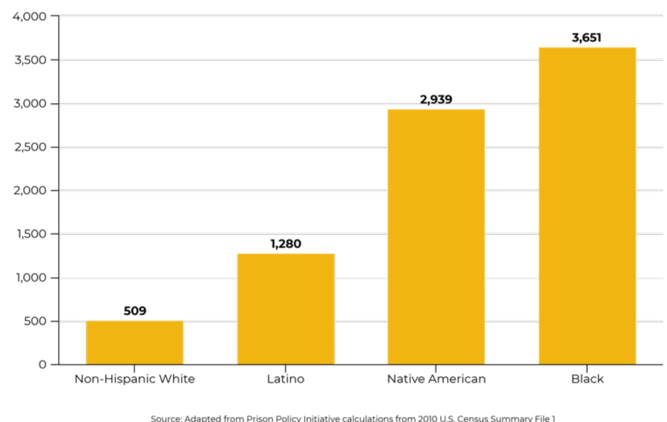
Influence of Poverty

Most incarcerated individuals are impoverished before their involvement with the criminal justice system, and the connection to this system only entrenches deeper poverty. By some estimates, the nationwide poverty rate would have been 20 percent lower between 1980 and 2014 if not for the trend of mass incarceration.



Research from Prison Policy Initiative shows incarcerated people nationwide had a median income of $19,185 prior to their incarceration, 41 percent lower than non-incarcerated people of similar ages. The wages earned while in prison are extremely low — the average incarcerated wage is $0.14 to $0.63 per hour. In Colorado, that range is $0.13 to $0.38. This is compounded by the high costs of basic necessities, such as phone calls and toilet paper, especially in Colorado.

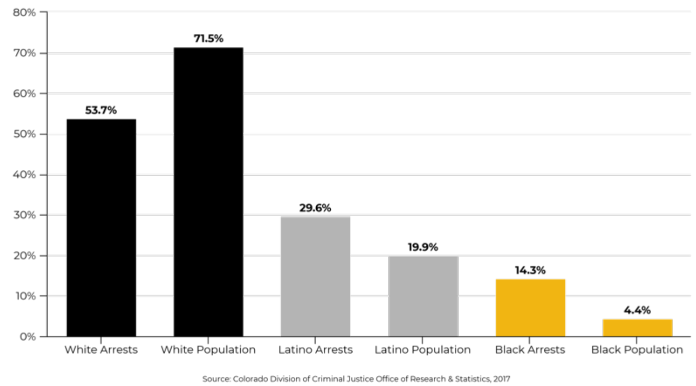
The fees charged to those on probation or parole also make reentry incredibly difficult. Forty-eight percent of Coloradan supervisees make less than $20,000, and all are charged a monthly supervision fee of up to $50. Failure to pay this supervision fee can result in what have been called "poverty penalties" or "poverty traps." In Colorado, this can include property liens, wage garnishment, mandatory work programs, community service, extension of parole or probation sentence, or reincarceration. Oftentimes, as part of one's probation or parole conditions, an individual may also have to pay court costs, miscellaneous one-time fees, electric monitoring costs, or any combination of these charges. For example, Colorado's mandatory court-imposed surcharge is $1,005 for simple possession of a controlled substance. For the lowest level drug felony — distribution — the surcharge is $1,510.



Poverty is also a significant psychological stressor, especially for young people. A study published in the Journal of Quantitative Criminology finds children who experience chronic poverty during their early and teenage years — between birth and age 5 and ages 11 and 15, respectively — are significantly more likely to engage in both property and violent offending. Looking at the specific crimes committed by juveniles in Colorado, most juveniles arrested in 2017 were arrested for either simple assault or theft.

Policing & Sentencing by Race in Colorado

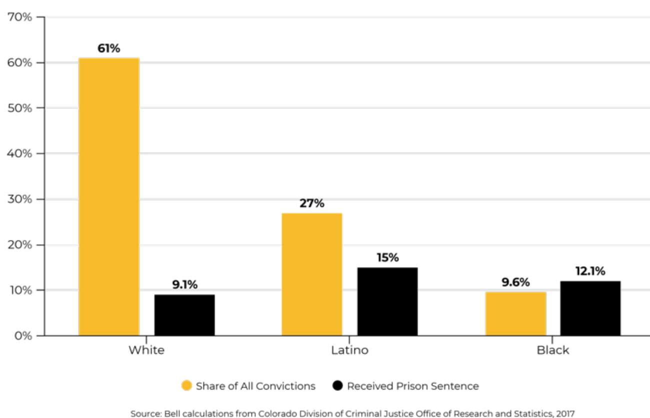
In Colorado, the majority of all arrests of people of color are on-view/probable cause arrests, or arrests relying on police judgement that a person has committed a crime. White Coloradans account for a disproportionately small percentage of these arrests compared to their population size, while Coloradans of color make up a disproportionately large share. This means Coloradans of color — particularly black Coloradans — are more likely to be arrested by the police based on an officer's judgement. (The Colorado Division of Criminal Justice doesn't collect statistics for Native Americans.)

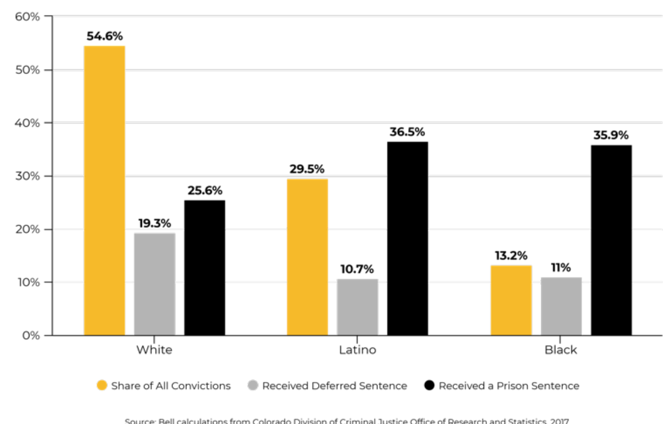


Researchers Katherine Spencer, Amanda Charbonneau, and Jack Glaser provide an explanation: implicit, unconscious biases rooted in racial stereotypes significantly impact interactions between police and different racial groups. These stereotypes can be based on race or exacerbated by income status. A study by Richard Weitzer finds middle class black and middle class white neighborhoods are both more likely to experience softer policing tactics than lower-income black neighborhoods. This suggests negative stereotypes might be reinforced in lower-income communities of color by social conditions produced by poverty, leading to harsher policing tactics and a more adversarial relationship between police and the community.

A historical analysis by Dr. Gary Potter of Eastern Kentucky University sheds further light on this phenomenon, showing modern American policing emerged as a means of social control of the "dangerous classes" — poor working class immigrant populations and free black people — in the northern United States, and slave patrols in the southern United States. Potter writes the development of American policing eventually resulted in a widespread policy of proactive policing, which means targeting "bad people" to prevent crime, a policy which continues in many departments today.

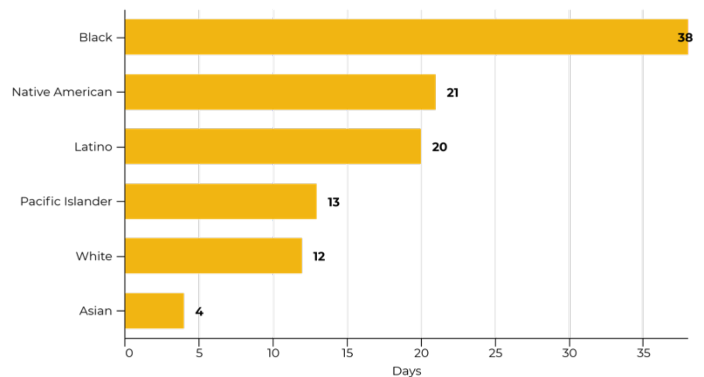
There are also disparities in sentencing. White Coloradans are sentenced to prison for drug crimes at a lower rate than any other race. White Coloradans who commit felony assault also have their cases deferred at higher rates and go to prison at lower rates than other races. These statistics illustrate that once arrested and convicted, Colorado's courts are more likely to sentence a person of color to prison than a white person. The Sentencing Project, a national organization working on criminal justice reform, suggests these racial disparities are caused by biased use of discretion within prosecution, laws that disadvantage people of color, and practices that disadvantage poor defendants, such as inadequate representation and overloaded public defenders.





School-to-Prison Pipeline

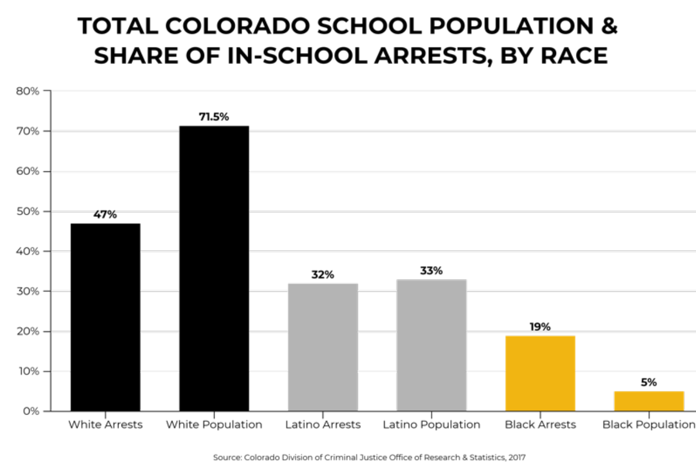
Schools are supposed to be a place of opportunity and upward mobility. For Colorado's students of color, schools can instead become a direct route to either the criminal justice system or disconnection. Data show there is a relationship between one's race and the likelihood of being arrested or disciplined in school, which as shown above, intersects with economic status.



Furthermore, 65 percent of all incarcerated Americans did not receive a high school diploma and just over 41 percent dropped out. The Prison Policy Institute reports there is a correlation between dropping out of school and later being incarcerated, which disproportionately impacts people of color.

Although Brown v. Board of Education banned the explicit segregation of schools in 1954, the legacies of redlining and neighborhood segregation have largely maintained segregated schools. The racial wealth gap and neighborhood segregation directly translates to school funding: The U.S. Department of Education finds more than 40 percent of low-income schools don't get a fair share of state and local funds. Other research shows per-pupil funding has a sizable effect on student outcomes.

Colorado Public Radio (CPR) reports a recent study from national nonprofit, EdBuild, shows 67 percent of students in disadvantaged school districts in Colorado are non-white, while only 27 percent of students in advantaged school districts are non-white. In another EdBuild report prepared for the Colorado School Finance legislative committee, CPR reports the researchers find a large amount of Colorado's inequity in school funding is based on the "cost-of-living factor," which gives school districts extra funding based on the area's cost of living. For example, the two areas that receive the highest cost-of-living factor — Aspen and Telluride — are wealthier and whiter than other areas of the state. This, in part, has led to significant disparities in Colorado's education outcomes. Eighty-four percent of white students in Colorado graduated high school in 2017. Compare this to 64 percent of Native American students, 71 percent of Latino students, and 72 percent of black students.



Due to punitive and exclusionary zero tolerance policies, discipline in public schools also disproportionately affects students of color. In addition, it has been shown that black and Latino students are less likely to receive exclusionary discipline in schools with higher concentrations of black and Latino teachers. In Colorado, 87 percent of Colorado's teachers are white, while 38 percent of Colorado students are students of color.[ii]

The above findings have direct implications: White students in Colorado are less likely to be suspended and are suspended for shorter amounts of time than other students. Padres y Jóvenes Unidos research from 2016 shows black and Native American students in Colorado are three times more likely to receive out-of-school suspensions or expulsions than white students, and Latino students are one-and-a-half times more likely. The graph above shows this also translates to criminal justice involvement, as students of color are more likely to be arrested in school, paralleling the overall likelihood of juvenile arrest by race.

Additionally, in Denver, the percentage of disconnected white youth — those not in school nor working — is 4 percent. Eight percent of Asian youth in Denver are disconnected, 17 percent of black youth, 18 percent of Latino youth, and 19 percent of Native American youth. In terms of dropouts, 2.7 percent of white youth in grades 7 through 12 attending Denver Public Schools were dropouts in the 2016-2017 school year. This is compared to 5 percent of black and Latino youth and 9 percent of Native American youth.

Chronically inequitable and inadequate funding of Colorado's public schools, a teacher workforce that is not reflective of the student body, and punitive zero tolerance disciplinary policies that disadvantage students of color produce racially inequitable outcomes. In addition, what has been called "toxic stress" — the combined effects of poverty and trauma — have a significant impact on student outcomes. Together, these forces create a system that is hard for students of color from low-income backgrounds to succeed in, funneling many into either disconnection or criminal justice involvement.

Historical Foundations

Background

As outlined by the Bell's previous historical and contemporary analyses, intentional policy created the white middle class and the urban ghetto. During the 1960s, this imposed segregation and poverty led to many high-profile revolts in urban communities of color. The growing public unease with these revolts, termed "race riots" in the media, made "law and order" a central voting issue during the 1964 presidential election. Incumbent President Lyndon B. Johnson had to get tough on crime in order to win, which he did. President Johnson declared the War on Crime in 1965, largely in response to the urban revolts, which funneled more policing resources into communities of color to "restore law and order." This policy continues today under Section 1033 of the National Defense Authorization Act.

Before he left office, President Johnson ordered a study of the urban revolts, facilitated by the Kerner Commission. The central finding of the Kerner Commission was the urban revolts of the 60s were the result of economic desperation and were not typical "riots," but were instead "complex and unpredictable social processes." The Commission noted the federal government had three choices in addressing the conditions that caused these revolts: do nothing; adopt policies aimed at dramatically improving the quality of life in the ghetto while abandoning the concept of racial integration; or adopt policies aimed at improving conditions in the ghetto combined with policies that would facilitate integration.

The Choice

By the time the next president — Richard Nixon — took office, an organized economic justice movement demanding intentional economic reform had emerged. Nixon's economic advisor — Alan Greenspan, who later chaired the Federal Reserve until 2006 — wrote a memo in 1967 that shaped the Nixon administration's policies on this front. Greenspan wrote capitalism itself was under attack by demands made by black "militants" and rejected the idea that communities of color should be elevated to the level of affluence of the American middle class because it could, "only be done with massive government expenditures."[iii] The demands of these activists of color were largely modeled after President Franklin D. Roosevelt's proposed Economic Bill of Rights, which asserted the rights to a good education, housing, a living wage, and adequate medical care — notably in line with many of the recommendations of the Kerner Commission.

The spending needed to address economic justice for people of color in the 60s would have increased the national debt significantly (and thus taxes on the predominantly white middle class) and might increase inflation. The economy was in a recession, so Greenspan's recommendation was Nixon should instead pursue policies to, "help Negroes help themselves." In effect, the policy choice was to do nothing and instead promote what has been termed "Black Capitalism."[iv] As with the New Deal, the prosperity of people of color would be sacrificed to finance an economic recovery for the predominantly white, politically empowered middle and upper classes.

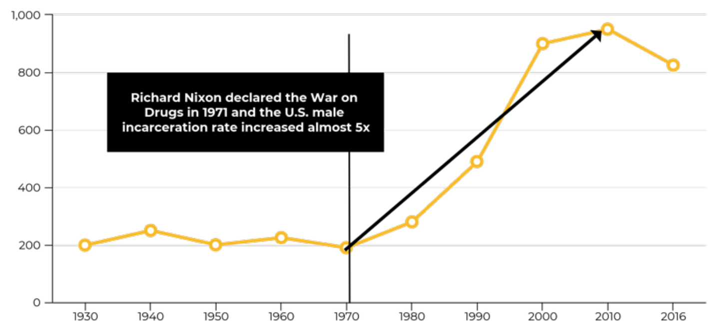
Erosion of Civil Liberties

In the face of a well-organized economic justice movement, Nixon faced a dilemma: He needed to find a way to do nothing, while also finding a way to pacify those who were calling on the government to take decisive action. By 1969, drug use and violence were a central focus in the national consciousness, allowing Nixon to declare the War on Drugs. In 1971, Nixon signed the Controlled Substances Act, publicly asserting, “drug abuse is public enemy number one.”

> **“We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”**
>
> *1994 interview with Nixon's domestic policy advisor John Ehrlichman*

The next 30 years marked a period of systematic erosion of the Fourth, Fifth, and Fourteenth Amendments — the rights allowing freedom from unreasonable search and seizure, due process, and equal protection under the law, respectively. Primarily through a series of legal decisions, police were protected in using practices such as stop and frisk; citizens were no longer protected from discrimination in sentencing and jury selection; and police were legally permitted to discriminate against people of color so long as they act “reasonably.” [v] This allowed the justice system to legally wage the War on Drugs, and to discriminate against people of color while doing it.

MALE INCARCERATION RATES OF SENTENCED PRISONERS UNDER STATE & FEDERAL JURISDICTION PER 100,000 POPULATION, 1925-2016



Source: Bell reproduction of American Enterprise Institute graph, Bureau of Justice Statistics

Potential Solutions

Because poverty is a major contributor to the racial wealth gap and mass incarceration, a major focus of any solutions should be on addressing and eliminating Colorado’s racially disparate poverty and wealth outcomes. The trends of mass incarceration and the school-to-prison pipeline also present unique issues that cement these disparities in wealth and poverty. Solutions that address these unique issues are considered here.

End Colorado’s Wars on Drugs & Crime

Colorado should consider strong criminal justice reforms that seek to reinstate and reinforce the Fourth, Fifth, and Fourteenth Amendments. While Colorado cannot change U.S. Supreme Court decisions, Colorado can take legislative action to protect these rights in our state’s justice system.

- **Policing Standards:** Colorado can set clear standards that provide protections for all citizens.
  - Follow New York City’s example by banning police officers from engaging in stop and frisk. The state could also follow the lead of Oregon’s courts and ban pretext stops and so-called consent searches.
  - Lawmakers in Montana and Tennessee have pursued legislation in recent years to prohibit local police departments from receiving military equipment from the Department of Defense.
  - Instruct the Department of Law to undertake an audit of all use of force standards — and the state of their functional application — in the interest of reforms and police training that promote the safety of all Coloradans.
- **Courtroom Standards**: Colorado lawmakers could also consider setting standards for discriminatory behavior and patterns in the courtroom that favor the rights of citizens.

- **End Punitive Fees:** The state should also consider approaches to end all "poverty traps" by reducing or eliminating mandatory court-imposed surcharges, supervision fees, and other post-incarceration fees in addition to relaxing the rules for access to TANF.
- **Expunge Marijuana Records:** Now that Colorado has a burgeoning marijuana industry, the state could also consider releasing and affirmatively expunging the records of anyone currently or formerly incarcerated who was arrested for a marijuana-related offense, including potentially removing marijuana-related offenses from our criminal code altogether.
- **Restorative Justice:** Other potential solutions include restorative justice approaches to criminal justice, with some legal scholars and activists going so far as to advocate for penal abolition.

Justice & Equality in Schools

- **Reform School Discipline:** Shift from punitive zero-tolerance approaches to school discipline to restorative justice (RJ) approaches. Restorative Justice refers to non-punitive, relationship-centered approaches for avoiding and addressing harm, responding to violations of legal and human rights, and collaboratively solving problems. A literature review conducted by the WestEd Justice & Prevention Research Center finds schools that have implemented restorative justice practices see between 21 percent and 85 percent reductions in misbehavior and 40 percent to 80 percent reductions in the use of formal punitive discipline, as well as significant improvement in absenteeism, four-year graduation rates, and dropout rates.
- **Hire More Teachers of Color:** Research shows students of color perform better and are less likely to be subjected to punitive and exclusionary discipline when they are taught by someone who looks like them. Eighty-seven percent of Colorado's teaching workforce is white, while at least 38 percent of Colorado's students are people of color. Efforts should be undertaken to diversify Colorado's teaching workforce to better reflect the demographics of Colorado's schools, in order to improve outcomes for students of color.
- **Address School Funding Inequities:** Colorado ought to reform its school funding formula and adequately fund public schools. As illustrated in this brief, inequities in funding contribute to racially disparate educational outcomes in Colorado. Colorado's per-pupil funding is $2,800 less than the national average. Not only would adequately funding our schools provide for equity, it would also provide for other promising approaches to education in Colorado, such as multicultural education, which has been shown to increase GPA, attendance, and credits earned for all students.

[i] Clear, Todd R, and Natasha Frost. The Punishment Imperative: The Rise and Failure of Mass Incarceration in America. New York University Press, 2015.
[ii] Bell analysis of data the Colorado Department of Education reported in 2019.
[iii] Baradaran, Mehrsa. "The Decoy of Black Capitalism." The Color of Money: Black Banks and the Racial Wealth Gap, The Belknap Press of Harvard University Press, 2017, pp. 165-214
[iv] Ibid.
[v] Alexander, Michelle The New Jim Crow: Mass Incarceration in the Age of Colorblindness. New York: New Press, 2010.